

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOMBARDIER, INC.,

Plaintiff,

v.

MITSUBISHI AIRCRAFT CORPORATION,  
MITSUBISHI AIRCRAFT CORPORATION  
AMERICA INC., AEROSPACE TESTING  
ENGINEERING & CERTIFICATION INC.,  
MICHEL KORWIN-SZYMANOWSKI,  
LAURUS BASSON, MARC-ANTOINE  
DELARCHE, CINDY DORNÉVAL, KEITH  
AYRE, AND JOHN AND/OR JANE DOES  
1-88,

Defendants.

NO. 2:18-cv-01543-JLR

**DECLARATION OF  
JACOB P. FREEMAN IN SUPPORT  
OF DEFENDANTS KEITH AYRE  
AND MARC-ANTOINE  
DELARCHE'S MOTION TO FILE  
UNDER SEAL THEIR OPPOSITION  
TO BOMBARDIER'S MOTION FOR  
PRELIMINARY INJUNCTION AND  
DECLARATION OF KEITH AYRE**

I, Jacob P. Freeman, declare as follows:

1. I am an associate with the firm Savitt Bruce & Willey LLP, and I am one of the attorneys responsible for the representation of Defendants Keith Ayre and Marc-Antoine Delarche in this matter. I am competent to testify and make this declaration based on personal knowledge.



# EXHIBIT 1

## Jacob Freeman

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**From:** Jacob Freeman  
**Sent:** Wednesday, May 15, 2019 2:43 PM  
**To:** Lindsay Calkins; John Denkenberger; Brian McMahon  
**Cc:** Daniel Hagen; Sanders, James (Perkins Coie); Riedinger, Jerry A. (Perkins Coie); mshultz@perkinscoie.com; Mark Bailey; Gaston, Mary Z. (Perkins Coie); Richard J. Omata; Alfonso, Shylah R. (Perkins Coie); James Savitt  
**Subject:** RE: Bombardier v. MITAC - redactions to May 13 filings

Lindsay,

We disagree that any of the information you have designated or that I listed in my May 14 email is confidential. However, if we cannot come to an agreement on this we will honor your request to seal these two May 13 filings, without prejudice to our arguments that nothing in those documents is confidential.

Please see bulleted specific responses to your designations in red, below. In addition, please provide a statutory or regulatory basis for your contention that the communication with Transport Canada in Exhibit S is confidential.

I am free for a call today between 3:30 and 5:30 pm, and Thursday after 9:30 am.

Jacob

JACOB P. FREEMAN | SAVITT BRUCE & WILLEY LLP | 206/749-0500

*Privileged and Confidential:* Please be advised that this message may contain information that is private and legally privileged. If you are not the person for whom this message is intended, please delete it and notify me immediately of the error. Please do not copy or send this message to anyone else. Thank you for your cooperation.

**From:** Lindsay Calkins <[Lindsay.Calkins@cojk.com](mailto:Lindsay.Calkins@cojk.com)>  
**Sent:** Tuesday, May 14, 2019 5:17 PM  
**To:** Jacob Freeman <[jfreeman@sbwllp.com](mailto:jfreeman@sbwllp.com)>; John Denkenberger <[john.denkenberger@cojk.com](mailto:john.denkenberger@cojk.com)>; Brian McMahon <[brian.mcmahon@cojk.com](mailto:brian.mcmahon@cojk.com)>  
**Cc:** Daniel Hagen <[dhagen@karrtuttle.com](mailto:dhagen@karrtuttle.com)>; Sanders, James (Perkins Coie) <[JSanders@perkinscoie.com](mailto:JSanders@perkinscoie.com)>; Riedinger, Jerry A. (Perkins Coie) <[JRiedinger@perkinscoie.com](mailto:JRiedinger@perkinscoie.com)>; mshultz@perkinscoie.com; Mark Bailey <[mbailey@karrtuttle.com](mailto:mbailey@karrtuttle.com)>; Gaston, Mary Z. (Perkins Coie) <[MGaston@perkinscoie.com](mailto:MGaston@perkinscoie.com)>; Richard J. Omata <[ROmata@karrtuttle.com](mailto:ROmata@karrtuttle.com)>; Alfonso, Shylah R. (Perkins Coie) <[SAfonso@perkinscoie.com](mailto:SAfonso@perkinscoie.com)>; James Savitt <[jsavitt@sbwllp.com](mailto:jsavitt@sbwllp.com)>  
**Subject:** RE: Bombardier v. MITAC - redactions to May 13 filings

Jacob,

In addition to the information you have identified below and redacted, Bombardier considers the following portions of yesterday's filings "Confidential" and/or "Confidential – Attorneys' Eyes Only" pursuant to Paragraph 2 of the Stipulated Protective Order (Dkt. No. 109). Please make arrangements to immediately re-file these documents under seal pursuant to LCR 5(g), with appropriately redacted copies filed in the public record.

Dkt. No. 159 (Opposition to Motion for PI):

Dkt. No. 160 (Ayre Decl.):

This information, in addition to the information previously redacted, qualifies as "Confidential" under Paragraph 2 of the Protective Order because it contains, at least, reflections of communications with regulatory authorities conducted with the expectation of privacy. Further, it qualifies as "Attorneys' Eyes Only" because it contains, at least, trade secrets and other information of direct competitive significance. These facts aside, there is no reason for Mr. Ayre or Mr. Delarche to covertly email information to themselves unless it contains information that is confidential to Bombardier, and of which they would not want to be known to be in possession.

- The first two sentences of this paragraph are conclusory, and insufficient under LCR 5(g)(3)(B). The last sentence is baseless and not a legitimate or good faith reason for asserting that information should be withheld from the public record.

Please contact the Court to pull the filings from the public record for the reasons stated above and let us know when you are available to meet and confer seal pursuant to LCR 5(g).

- We are available to meet and confer [ ].

Thank you,  
Lindsay Calkins

**Lindsay Calkins**  
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Christensen O'Connor Johnson Kindness PLLC

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**From:** Jacob Freeman [<mailto:jfreeman@sbwllp.com>]

**Sent:** Tuesday, May 14, 2019 2:19 PM

**To:** John Denkenberger; Brian McMahon; Lindsay Calkins

**Cc:** Daniel Hagen; Sanders, James (Perkins Coie); Riedinger, Jerry A. (Perkins Coie); [mshultz@perkinscoie.com](mailto:mshultz@perkinscoie.com); Mark Bailey; Gaston, Mary Z. (Perkins Coie); Richard J. Omata; Alfonso, Shylah R. (Perkins Coie); James Savitt

**Subject:** Bombardier v. MITAC - redactions to May 13 filings

Counsel,

Yesterday we filed Mr. Ayre and Mr. Delarche's Opposition to Bombardier's Motion for Preliminary Injunction (ECF No. 159) and the Declaration of Keith Ayre (ECF No. 160), both of which contain redactions we made out of an abundance of caution, in case Bombardier were to contend that the redacted information is its trade secret. The information we redacted is below. We do not believe any of this information is a trade secret or confidential.

Please let us know by 12 noon tomorrow whether Bombardier contends that any of this information is its trade secret and, if so, the reasons why and times Wednesday afternoon counsel is available to meet and confer pursuant to LCR 5(g).

Opposition to Motion for Preliminary Injunction

[Redacted content]

Declaration of Keith Ayre

[Redacted content]

JACOB P. FREEMAN | SAVITT BRUCE & WILLEY LLP

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on May 17, 2019 I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 17th day of May, 2019 at Seattle, Washington.

  
Gabriella Sanders